

**TOWNSEND**  
*and*  
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**CREW**

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**FACSIMILE COVER SHEET**

Date:

**May 02, 2003**

To:

Examiner Andrea D. Small

Client & Matter Number :

**018072-000600US**

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No. Pages (including this one):

**12**

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From : Kenneth E. Jenkins, Ph.D.

**Message:**

Dear Examiner Small:

Thank you for taking the time to speak with me this morning and last evening. We appreciate your help in clarifying the position of Art Unit 1626.

As you know, our position is that In re Weber's discussion of the impropriety of restricting a Markush claim under §121 is not dicta, but rather legal precedence that has been followed by the courts. To demonstrate our point, I have included the following items:

- (1) A shepardization report showing no negative treatment of In re Weber in any case and showing numerous citings by the Federal Circuit, the Board of Appeals and various District Courts.
- (2) Excerpts from In re Watkinson (Fed. Cir. 1990) and In re Hamisch (CCPA 1980) discussing In re Weber and improper restriction of a Markush claim under §121.
- (3) An excerpt from Chisum discussing the case law regarding the restriction of a Markush claim under §121.

Please feel free to contact me if you would like to discuss any of the enclosed items.

Best Regards,  
Ken

|                |                 |                                    |                      |   |             |
|----------------|-----------------|------------------------------------|----------------------|---|-------------|
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Return to: Kenneth E. Jenkins, Ph.D. - (4087)

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